

ANN STEADMAN, individually and as Personal Representative of the Estate of ANDREW STEADMAN, Deceased,	)	No. 24183-1-III
	)	
	)	
Appellant,	)	Division Three
	)	
v.	)	
	)	
OKANOGAN COUNTY,	)	
	)	UNPUBLISHED OPINION
Respondent.	)	
	)	

**SCHULTHEIS, A.C.J.** — Andrew Steadman was killed in a car accident on an unmarked curve on a road that Okanogan County (County) designated as “primitive.” His wife, Ann Steadman, sued the County for failure to use ordinary care in the design, maintenance, and signing of the road. The trial court granted the County’s motion for summary judgment. Ms. Steadman claims on appeal (as she did below) that due to changed conditions, the road no longer met the statutory definition of a primitive road; thus, the County’s primitive road designation is invalid. She also argues that the County voluntarily assumed the duty to warn her husband. We conclude that because RCW 36.75.300 provides that the County has no duty to maintain a road it designates by

ordinance as primitive and does not impose upon the County the duty to monitor its primitive road designation in a particular manner, the County owed no legal duty to Mr. Steadman. We further conclude that inadequate briefing prevents meaningful review of her voluntary assumption of duty claim, and so we decline to review it. Accordingly, we affirm.

### **FACTS**

On June 28, 2000, Andrew Steadman left his home in Renton, Washington, to go camping and mountain biking in Okanogan County for several days. He was accompanied only by his dog. Mr. Steadman was killed in a single-car accident on July 2, at about 10:30 p.m., when he was driving eastbound on Balky Hill Road at milepost 4.016 as he returned to his campsite after having dinner in Twisp. According to deputies, he was going too fast to negotiate an unmarked 90-degree turn, his vehicle left the road, and he was ejected when his car rolled 7 to 8 times down a hillside. He was pronounced dead at the scene.

Mr. Steadman's wife, Ann Steadman, individually and on behalf of his estate, sued Okanogan County for his wrongful death, claiming the County failed to use ordinary care in the design, maintenance, and signing of Balky Hill Road. The County moved for summary judgment. The County claimed that it had no duty to maintain Balky Hill Road because it designated Balky Hill Road by ordinance as a primitive road, and design and

signage cannot be the basis of an action for damages against a county arising from vehicle traffic on a primitive road. RCW 36.75.300. Ms. Steadman opposed the County's motion and filed a cross-motion for summary judgment. She asserted that because Balky Hill Road no longer qualified as a primitive road under the statute, the ordinance by which it was classified is invalid, and the County had a duty to exercise reasonable care and provide warnings, which it breached. She also argued that regardless of the ordinance, the County assumed a duty to warn Mr. Steadman when it placed warning signs elsewhere on the road. The trial court granted summary dismissal. Ms. Steadman appeals.

### **DISCUSSION**

Ms. Steadman contends that the trial court erred in granting the County's summary judgment motion. We apply de novo review to a trial court's disposition of a summary judgment motion. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

The moving party is entitled to summary judgment when it demonstrates through the pleadings, affidavits, depositions, and admissions on file that there is no genuine issue of material fact. *Id.* Reasonable inferences from the evidence must be resolved against the moving party, and the motion should be granted only if, from all the evidence, a reasonable fact finder could reach but one conclusion. *Id.*

#### *a. Duty*

The elements of a negligence action are duty, breach, causation, and injury. *Keller*

*v. City of Spokane*, 146 Wn.2d 237, 242, 44 P.3d 845 (2002). The pivotal issue is whether the County owed Mr. Steadman a duty. The question of whether a duty exists is a question of law. *Shepard v. Mielke*, 75 Wn. App. 201, 205, 877 P.2d 220 (1994); *Murphy v. State*, 115 Wn. App. 297, 305, 62 P.3d 533 (2003) (citing *Snyder v. Med. Serv. Corp.*, 145 Wn.2d 233, 243, 35 P.3d 1158 (2001)).

In 1980, the legislature enacted RCW 36.75.300, which provides:

The legislative authority of each county may by resolution classify and designate portions of the county roads as primitive roads where the designated road portion:

- (1) Is not classified as part of the county primary road system, as provided for in RCW 36.86.070;
- (2) Has a gravel or earth driving surface; and
- (3) Has an average annual daily traffic of one hundred or fewer vehicles.

Any road designated as a primitive road shall be marked with signs indicating that it is a primitive road, as provided in the manual of uniform traffic control devices, at all places where the primitive road portion begins or connects with a highway other than another primitive road. No design or signing or maintenance standards or requirements, other than the requirement that warning signs be placed as provided in this section, apply to primitive roads.

The design of a primitive road, and the location, placing, or failing to place road signs, other than the requirement that warning signs be placed as provided in this section, shall not be considered in any action for damages brought against a county, or against a county employee or county employees, or both, arising from vehicular traffic on the primitive road.

Also in 1980, Okanogan County adopted Resolution No. 39-80, in which the county commissioners found that Balky Hill Road met the statutory criteria for a primitive road

classification and designated the road as a primitive road under the statute.

RCW 36.75.300 has not been examined by our courts.

Ms. Steadman recognizes that the legislature granted “immunity” to counties from damages for lack of signage on roads they classify as primitive roads in accordance with RCW 36.75.300. But she contends Balky Hill Road does not qualify as a primitive road under the statute, so the County’s resolution to classify it became invalid. Ms. Steadman concedes that Balky Hill Road is not classified under the primary road system and has a gravel or earth driving surface. She contends that the County exceeded the “average annual daily traffic of one hundred or fewer vehicles.” RCW 36.75.300. Because the traffic on Balky Hill Road exceeded that intended by the legislature for primitive roads, she asserts, the County’s ordinance designation became invalid, and the immunity provision of RCW 36.75.300 does not apply. If Ms. Steadman were correct, the County would owe her husband the common law duty it owes any other motorist on a public road. *See Keller*, 146 Wn.2d at 249 (“municipality owes a duty to all persons, whether negligent or fault-free, to build and maintain its roadways in a condition that is reasonably safe for ordinary travel”).

The County presented evidence concerning traffic counts as follows:

	<b>Milepost 0.019- 0.050</b>	<b>Milepost 1.040</b>	<b>Milepost 2.450</b>	<b>Milepost 3.440</b>	<b>Milepost 4.398- 4.440</b>	<b>Milepost 4.550</b>
<b>1993</b>	64					127
<b>1994</b>	77				43	

<b>1996</b>					38	56
<b>1997</b>	88					137
<b>1998</b>	106		43		43	
<b>1999</b>					57	
<b>2000</b>	126		37			
<b>2001</b>	84				42	
<b>2002</b>	150					
<b>2003</b>		34		35	62	62

Clerk's Papers at 145-46, 231.

The County's witness testified that when the average daily traffic (ADT) count exceeds 100, the County undertakes further investigation to determine whether the count reflects the average annual daily traffic (AADT). This is done, the witness explained, because ADT counts do not typically consider external circumstances that temporarily inflate vehicle traffic counts at a given point on the road. Thus, when evaluating the AADT count, the County considers the ADT counts from a variety of points on the road to determine if a higher ADT count is a temporary spike or a legitimate AADT count increase. Temporary spikes have been caused by a special event at a private horse recreation facility; the presence of hunters, campers, or fishermen; and increased traffic from new home construction.

Ms. Steadman presented evidence from an expert who testified as to a standard and generally accepted method used by highway engineers to annualize ADT counts and adjustments for seasonal variations. Based on this method, the expert determined that in 1998 the AADT count for Balky Hill Road was 150 vehicles, and in 2000 the AADT count

was 131 vehicles. Ms. Steadman concedes that the AADT count is lower at some locations, perhaps even at the accident scene. But, she asserts, the traffic counts performed by the County were so irregular in time and at such random locations, the County could never determine, on the basis of the data it collected, whether it should reclassify all or any portion of Balky Hill Road. Ms. Steadman's expert also questioned the County's assertion that traffic variations caused by special events, hunters, and housing construction should be considered events that cause traffic spikes that are not helpful when determining the AADT count. Ms. Steadman's expert opined that traffic is traffic, regardless of the cause, so it cannot generate artificially high counts.

Neither RCW 36.75.300 nor the ordinance specifies the frequency of and manner in which the "average annual daily traffic" is to be calculated. The County has no duty to use the formula used by Ms. Steadman's expert. It need only use a reasonable method. *See, e.g., Bremerton Mun. League v. City of Bremerton*, 13 Wn.2d 238, 243, 124 P.2d 798 (1942). The method employed by the County is not unreasonable. The county ordinance designating Balky Hill Road as a primitive road was not rendered invalid by the way the County chose to measure the average annual daily traffic. The primitive road statute applies to Balky Hill Road. Therefore, the County owed no duty to Mr. Steadman.

b. *Voluntary Assumption of Duty*

Ms. Steadman argues that even if RCW 36.75.300 applies, the County voluntarily

assumed the duty to warn the public of the danger of the curve where Mr. Steadman crashed because it placed a warning sign at the curve in 1991 or earlier despite the primitive road designation. “One who undertakes, albeit gratuitously, to render aid to or warn a person in danger is required by our law to exercise reasonable care in his efforts, however, commendable.” *Brown v. MacPherson’s, Inc.*, 86 Wn.2d 293, 299, 545 P.2d 13 (1975). Ms. Steadman relies on unpublished extra-jurisdictional authority to support her claim. Citation to unpublished opinions of other jurisdictions is inappropriate under the appellate rules. *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn. App. 446, 472-473, 45 P.3d 594 (2002) (citing former RAP 10.4(g) (2000); RAP 10.4(h)). Without citation to authority, the County essentially argues only that the clear statutory mandate of RCW 36.75.300 defeats the common law rule regarding voluntary assumption of duty. Ms. Steadman does not respond to that argument. Inadequate briefing makes it impossible to meaningfully address this novel claim.

### **CONCLUSION**

The County owed no duty to Mr. Steadman enforceable in tort. We decline to address Ms. Steadman’s voluntary assumption of duty claim. We affirm.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

No. 24183-1-III  
*Steadman v. Okanogan County*

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Schultheis, A.C.J.

WE CONCUR:

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Brown, J.

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Kulik, J.